

M. David Graubard, Esq.
Attorney for CNG Foods LLC, Alleged Debtor
71-18 Main Street
Flushing, NY 11367
(212) 681-1436

Return Date: 1/18/17 at 3:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

CNG FOODS LLC,

Chapter 11
Case No. 16-43278

Debtor.

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**SUPPLEMENTAL CERTIFICATION IN SUPPORT OF MOTION
TO DISMISS INVOLUNTARY PETITION AND FOR SANCTIONS**

M. David Graubard, an attorney admitted to practice in the Eastern District of New York, hereby certifies the following to be true under the penalties of perjury:

1. Affirmant is counsel for the alleged debtor CNG Foods LLC ("CNG") and makes this Certification based upon his own personal knowledge and information gleaned from the records of the Supreme Court of the State of New York, County of Kings and this Court.
2. The alleged debtor made a Motion to Dismiss the Involuntary Petition and for Sanctions based upon the bad faith filing of the involuntary petition as an effort by the petitioning creditors to avoid a hearing on contempt that was scheduled in the state court.
3. At the hearing held on November 17, 2016, this Court noted that the petitioning creditors still had time to get a supplemental summons and to have it served

properly before the 120 days expired under F.R.Civ.P. Rule 4(m) made applicable by F.R.B.P. 7004(a).

4. The original summons was issued on July 28, 2016, so that the 120 day period expired on November 25, 2016. Although the supplemental summons was issued on November 18, 2016 (see copy of the docket sheet as of December 8, 2016 annexed hereto as Exhibit A), there is no affidavit of service on file. Moreover, Affirmant is advised by Ms. Deena Zaitschek, the managing member of the debtor, that neither she nor the debtor have been served with the supplemental summons and/or copy of the involuntary petition.

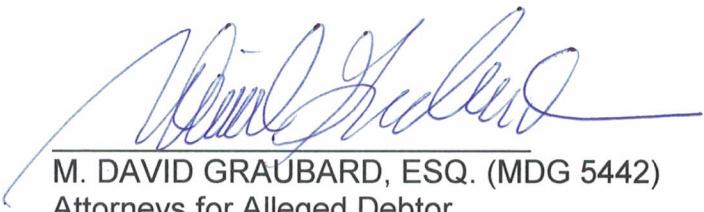
5. Pursuant to F.R.Civ.P. Rule 4(l)(1), a Proof of Service is required to be filed with the Court. Obviously, this has not been done and, in fact, service was never even accomplished with respect to the supplemental summons.

6. Accordingly, in addition to all the reasons set forth in the underlying Motion to Dismiss the Involuntary Petition and for Sanctions, the additional "second bit of the apple" even to the petitioning creditors to serve the supplemental summons has failed.

7. Without prejudice to the arguments set forth herein, to the extent necessary with respect to the Supplemental Summons, the alleged debtor incorporates by reference the Motion to Dismiss Involuntary Petition and for Sanctions previously made and now adjourned to January 18, 2017.

WHEREFORE, Affirmant respectfully requests that this Court grant the Motion to Dismiss the Involuntary Petition and for Sanctions for the bad faith filing of the involuntary petition, as more fully set forth in the underlying motion, together with such other and further relief as may be proper.

Dated: New York, New York
December 9, 2016



M. DAVID GRAUBARD, ESQ. (MDG 5442)
Attorneys for Alleged Debtor
71-18 Main Street
Flushing, NY 11367
(212) 681-1436

Date filed: 07/26/2016

Chapter 7
Involuntary

Debtor

CNG Foods LLC
1376 Coney Island Avenue
Brooklyn, NY 11230
KINGS-NY
Tax ID / EIN: 00-0000000

represented by **M David Graubard**
Kera & Graubard
71-18 Main Street
Flushing, NY 11367
(212) 681-1600
Fax : (212) 681-1601
Email: dgraubard@keragraubard.com

Petitioning Creditor

Barry R. Feerst & Associates
194 South 8th Street
Brooklyn, NY 11211
718-384-9111

represented by **Barry R Feerst**
194 South 8th Street
Brooklyn, NY 11211
(718) 384-9111
Fax : (718) 384-5999
Email: barry@brfesq.com

Petitioning Creditor

Baruch Aryeh Stern
1789 East 17th Street
Brooklyn, NY 11229

represented by **Barry R Feerst**
(See above for address)

Petitioning Creditor

Eileen Prensky
382 Central Park West
Apt 5R
New York, NY 10025

represented by **Barry R Feerst**
(See above for address)

Petitioning Creditor

Isaac Shteierman
1414 Kings Hwy
Brooklyn, NY 11230

represented by **Barry R Feerst**
(See above for address)

U.S. Trustee

Office of the United States Trustee
Eastern District of NY (Brooklyn Office)
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, NY 10014
(212) 510-0500

Filing Date	#	Docket Text
	1 (5 pgs)	Chapter 7 Involuntary Petition Against a Non-Individual. Fee Amount \$335 Re: CNG Foods LLC Filed by Petitioning Creditor(s): Barry R. Feerst & Associates (attorney Barry R Feerst), Baruch Aryeh Stern (attorney Barry R Feerst), Eileen Prensky (attorney Barry R Feerst),

EXHIBIT A

07/26/2016		Isaac Shteierman (attorney Barry R Feerst). (Feerst, Barry) (Entered: 07/26/2016)
07/26/2016		Receipt of Involuntary Petition (Chapter 7)(1-16-43278) [misc,ivol7] (335.00) Filing Fee. Receipt number 14592729. Fee amount 335.00. (re: Doc# 1) (U.S. Treasury) (Entered: 07/26/2016)
07/28/2016	<u>2</u> (5 pgs)	Statement <i>Correcting format of electronic signatures on Form 205 - Involuntary Petition</i> Filed by Barry R Feerst on behalf of Barry R. Feerst & Associates (Feerst, Barry) (Entered: 07/28/2016)
07/28/2016	<u>3</u> (1 pg)	Involuntary Summons Issued on Debtor CNG Foods LLC (cjm) (Entered: 07/28/2016)
09/18/2016	<u>4</u> (49 pgs; 12 docs)	[COUNSEL TO AMEND NOTICE TO INCLUDE PROPER HEARING LOCATION] - Motion to Dismiss Case of <i>Involuntary Petition Pursuant to Bankrutcy Code Section 303</i> , in addition to Motion For Sanctions Pursuant to <i>Bankruptcy Code Section 303(i) and F.R.B.P. 9011</i> . Filed by M David Graubard on behalf of CNG Foods LLC. Hearing scheduled for 11/17/2016 at 11:00 AM at Courtroom 2529 (Judge Lord), Brooklyn, NY. (Attachments: # <u>1</u> Exhibit A (Order to Show Cause dated May 18, 2016) # <u>2</u> Exhibit B (Summons with Notice) # <u>3</u> Exhibit C (Order to Show Cause dated April 6,2016) # <u>4</u> Exhibit D (Order to Show Cause dated April 20, 2016) # <u>5</u> Exhibit E (Two Checks to Barry R. Feerst, Esq.) # <u>6</u> Exhibit Order to Show Cause dated April 26, 2016) # <u>7</u> Exhibit G (Court Order dated April 27, 2016) # <u>8</u> Exhibit H (Certificate of Incopportion of CNG Brooklyn, Inc.) # <u>9</u> Exhibit I (Court Order dated May 19, 2016) # <u>10</u> Exhibit J (Bankruptcy Court Docket Sheet) # <u>11</u> Exhibit K (Invoice to Eileen Prensky)) (Graubard, M) Modified on 9/19/2016 (agh). (Entered: 09/18/2016)
09/19/2016	<u>5</u> (2 pgs)	Amended Notice of Hearing RE: Motion to Dismiss Case <i>Amended Notice of Motion to show change in location of Judge Lord's courtroom to Room 2529 instead of 3rd floor</i> , in addition to Amended Motion For Sanctions <i>Amended Notice of Motion to show change in location of Judge Lord's courtroom to Room 2529 instead of 3rd floor</i> Filed by M David Graubard on behalf of CNG Foods LLC (RE: related document(s)4 Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions). Hearing scheduled for 11/17/2016 at 11:00 AM at Courtroom 2529 (Judge Lord), Brooklyn, NY. (Graubard, M) (Modified on 9/23/2016 for clarification) (agh). (Entered: 09/19/2016)
	<u>6</u> (2 pgs; 2 docs)	Order to Show Cause to Dismiss Case for Failure to Prosecute. Signed on 9/23/2016; Show Cause hearing to be

09/23/2016		held on 11/17/2016 at 11:00 AM at Courtroom 2529 (Judge Lord), Brooklyn, NY. (cj) (Entered: 09/23/2016)
09/25/2016	<u>7</u> (2 pgs)	BNC Certificate of Mailing with Application/Notice/Order Notice Date 09/25/2016. (Admin.) (Entered: 09/26/2016)
11/16/2016	<u>8</u> (1 pg)	Summons Service Executed in an Involuntary Case on CNG Foods LLC 9/1/2016, Answer Due 9/22/2016 Filed by Barry R Feerst on behalf of Barry R. Feerst & Associates ; Eileen Prensky ; Isaac Shteierman ; Baruch Aryeh Stern (Feerst, Barry) (Entered: 11/16/2016)
	<u>9</u> (5 pgs; 2 docs)	Declaration In Response to Debtor's Motion to Dismiss Filed by Barry R Feerst on behalf of Barry R. Feerst & Associates (related document(s) <u>4</u> Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions, <u>5</u> Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions) (Attachments: # <u>1</u> Exhibit Affadavit of Service) (Feerst, Barry) Modified on 11/17/2016 (cj). (Entered: 11/16/2016)
11/16/2016	<u>10</u> (5 pgs; 2 docs)	[DUPLICATE OF ECF NO. 9] Response Filed by Barry R Feerst on behalf of Barry R. Feerst & Associates (RE: related document(s) <u>4</u> Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions, <u>5</u> Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions) (Attachments: # <u>1</u> Exhibit Affadavit of Service) (Feerst, Barry) Modified on 11/17/2016 (cj). (Entered: 11/16/2016)
11/16/2016	<u>11</u> (4 pgs)	Reply <i>Certification in Support of Motion to Dismiss Involuntary Petition and for Sanctions</i> . Filed by M David Graubard on behalf of CNG Foods LLC (RE: related document(s) <u>4</u> Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions, <u>5</u> Motion to Dismiss Case filed by Debtor CNG Foods LLC, Motion for Sanctions, <u>10</u> Response filed by Petitioning Creditor Barry R. Feerst & Associates) (Graubard, M) (Entered: 11/16/2016)
11/17/2016		Show Cause Hearing Held; Appearances: M. David Graubard (Counsel for Debtor), Barry Feerst (Petitioning Creditor); Hearing Adjourned to 01/18/2017 at 03:00 PM at Courtroom 2529 (Judge Lord), Brooklyn, NY; (related document(s): <u>6</u> Show Cause Re: Lack of Prosecution) (ahoward) (Entered: 11/28/2016)
		Hearing Held; Appearances: M. David Graubard (Counsel for Debtor), Barry Feerst (Petitioning Creditor); Hearing Adjourned to 01/18/2017 at 03:00 PM at Courtroom 2529 (Judge Lord), Brooklyn, NY.; (related

11/17/2016		document(s): 4 Motion to Dismiss Case filed by CNG Foods LLC (ahoward) (Entered: 11/28/2016)
11/18/2016	<u>12</u> (1 pg)	Supplemental Involuntary Summons Issued on Debtor CNG Foods LLC (ads) (Entered: 11/18/2016)